

## REMARKS

Claims 1-5 have been canceled without prejudice or disclaimer. New claims 6-11 have been added. Basis for new claim 6 can be found, for example, in original claim 1, paragraph 20 of the specification, and drawings 1-3, 5, and 9. New claim 7 corresponds to canceled claim 2 with a few minor word rearrangements. Basis for new claim 9 can be found, for example, in canceled claim 3, paragraph 20 of the specification, and drawings 1-3, 5, and 9. New claims 10 and 11 correspond to canceled claims 4 and 5. No new matter has been added.

The Office states that the oath or declaration is defective because it was not signed or dated by the applicant and required a new oath or declaration.

Applicant respectfully submits that an executed declaration and power of attorney was filed with the U.S. Patent and Trademark Office on June 29, 2004 and received by the Office on June 30, 2004. See attached submission and USPTO stamped Correspondence receipt card. Furthermore, a copy of the signed Declaration and Power of Attorney is available on the PAIR System-a copy of the submission from PAIR is also attached. Therefore, Applicant submits that the Declaration is not defective. Withdrawal of the requirement to submit a signed oath

or declaration is respectfully requested.

The rejection of claims 1-5, as it now pertains to new claims 6-11, under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office states that Claims 1, 3, and 5 are rejected because each of the claims has the limitation "...said wick is adjustable in order to achieve maximum attraction of said at least one liquid attractant..." since as seen in applicants disclosure, the wick is to absorb the attractant so that the attractant can be emitted from the device and the wick is not used to attract the liquid attractant but is instead to aid in attracting insects to the device.

Applicant respectfully submit that new claims 6-11, specifically new claims 6, 9, and 11 no longer recite the above-identified limitation. The new claims now recite "... said wick is frictionally adjustable to provide an emission rate of said at least one attractant which results in maximum attraction of said flying insect...".

Withdrawal of the instant rejection is respectfully requested.

The rejection of claims 1-5, as it now pertains to new claims

6-11, under 35 USC 102(b) as being anticipated by U.S. Patent No. 2,254,948 to Kubalek or U.S. Patent No. 4,908,977 to Foster is respectfully traversed. The Office states that Kubalek and Foster disclose a device/method for providing uniform emission of a flying insect attractant comprising a container-at 14, 16 of Kubalek and at 1,3 of Foster, comprising a composition having at least one liquid attractant for attracting flying insects-referring to example page 1, column 2, lines 26-33 of Kubalek and column 2, lines 1-68 of Foster, a wick at 11 of Kubalek and at 4 of Foster, inserted into the container wherein the wick is adjustable in order to achieve maximum attraction of the at least one liquid attractant-citing Figures 1-5 of Kubalek and Figures 1-2 of Foster, and an opening citing 19 Or 220 of Kubalek and 5 of Foster, in the container to allow air to enter the device as the at least one liquid attractant is absorbed in the wick citing figures 1-5 of Kubalek and figures 1-2 of Foster, at least one volatile insecticide in the container and is absorbed by the wick citing page 1, column 2, lines 22-25 of Kubalek and column 2, lines 1-68 of Foster and hanging the at least one trap in a location suspected of being infested by at least one of a targeted pest flying insect citing 21 or 38 or 39 in figures 1-5 of Kubalek and clam 20 in column 8 of Foster.

Applicant respectfully submit that Kubalek and Foster both fail to anticipate the instantly claimed invention. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. It is not enough, however, that the reference discloses all the claimed elements in isolation. Neither reference teaches a device or a method **consisting** of a container having a top surface, a bottom surface, and side walls, having a composition of at least one liquid attractant for attracting flying insects, and a first opening in the top of said container to receive a wick; a wick inserted into said first opening of said container wherein the length of said wick is frictionally adjustable to provide an emission rate of said at least one attractant which results in maximum attraction of said flying insect, and a second opening in the top of said container, smaller than said first opening and large enough to prevent film closure by a liquid, wherein said second opening allows air to enter into said container to create air pressure which allows a steady flow of said attractant into said wick.

Kubalek discloses a device that includes sugar or molasses as an insect attractant and an attractant. The Patent specifically states on column 2, lines 34-36 that only water evaporates. The reference fails to disclose a volatile liquid attractant for flying insects. Furthermore, Kubalek fails to teach a frictionally adjustable wick to provide a uniform

emission rate of said at least one attractant which results in maximum attraction of said flying insect. The device of Kubalek is for killing insects that come in direct contact with the wick and the sugar or molasses remain in solution. The sugar or molasses encourage the insect to ingest enough of the liquid containing the toxicant to kill the insect. From the disclosure and the figures it appears that the wick is flush with the top of the device. With respect to claim 8, Kubalek fails to teach a first and second opening which form a single opening with the first opening being of a size to frictionally hold a wick and said second opening is elongated and narrower than said first opening.

Foster discloses a device that includes a target area that may extend into the liquid along with the wicking material and the target area is fitted with a closely fitting or flush grill 5 (Figure 2) to prevent accidental contact of the target area by humans and domestic pets and the grill openings are suitably limited to a size which accomplishes this function. The device requires direct contact of the insect and includes a **nonvolatile** compound (column 2, lines 48-57). Therefore, the device does not include an adjustable wick to provide uniform emission of a volatile attractant to result in maximum attraction of a flying insect. The Office states that item 5 is an opening in the container that allows air to flow into the container and for

refilling the container with a liquid. This is not the case. Item 5 is a flush grill to prevent accidental contact of the target area by humans and domestic pets and the grill openings are suitable limited to a size which accomplishes this function- See column 3, lines 34-50. Column 4, lines 28-40 describe how the reservoir is filled stating that a resealable inlet or portal may be provided for in a side or sides of the base section. These features are outside the scope of the presently claimed invention. Foster fails to teach a device or a method consisting of a device having a container with a frictionally adjustable wick to provide a uniform emission rate of said at least one attractant which results in maximum attraction of said flying insect.

Neither reference anticipates the claimed invention. Applicant respectfully requests withdrawal of the instant rejection.

In view of the above remarks, it is believed that all of the claims to be resolved, the Examiner is invited to telephone the undersigned at the number below.

In the event this paper is deemed not timely filed, the undersigned hereby petitions for an appropriate extension of time. Please charge any fees which may be required by this paper or at any time during prosecution of the instant application, or credit any overpayment, to deposit account 50-2134.

Respectfully Submitted,

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DATE

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#### CERTIFICATE OF FILING VIA FACSIMILE

The undersigned hereby certifies that the attached **AMENDMENT** and **TWO PROOFS OF FILING AN EXECUTED DECLARATION**, were this day, January 31, 2005<sup>4</sup> filed in the United States Patent and Trademark Office via facsimile to facsimile number 571-273-8300. Total Pages: 27

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